

## **COLORADO STATE BOARD OF MEDICAL EXAMINERS**

### **FULL BOARD OPEN MINUTES**

**November 20, 2008**

**9:00 a.m.**

A full board meeting of the Colorado State Board of Medical Examiners was held Thursday, November 20, 2008, at the Denver Post Building, 1560 Broadway, 9<sup>th</sup> Floor Common Conference Room, Denver, Colorado at 9:08 a.m. The meeting was noticed in accordance with Division policy.

Present were Dr. Butler, Dr. Calonge, Dr. Faricy, Mr. Jennings, Rev. Leivers, Dr. Matthews, Ms. Radcliff, Mr. Schoenmakers and Dr. Watts.

The meeting was conducted by Dr. Faricy.

Also in attendance for all or part of the meeting were Board staff Cheryl Hara, Program Director; Susan Miller, Healthcare Section Director; Susan Taylor, Enforcement Program Manager; Monica Brion, Enforcement Case Manager; Maria Soto, Program Assistant; and First Assistant Attorney General Ilene Wolf Moore.

### **MINUTES**

A motion was made, seconded, and carried to approve the open minutes of the August 21, 2008, meeting as drafted. A motion was made, seconded, and carried to approve the special meeting minutes of June 19, 2008 as drafted.

### **REPORTS**

#### **President's Report:**

Nothing to report.

#### **Director of Healthcare Section Report:**

##### **A. Board of Nursing Sunset Report and Recommendations**

The Board reviewed a memorandum from Susan Miller regarding Board of Nursing Sunset Report and Recommendations involving the Board of Medical examiners, dated October 20, 2008. This was for informational purposes.

##### **B. 1999 Memorandum of Understanding**

The Board reviewed a memorandum from Susan Miller regarding the 1999 Memorandum of Understanding (MOU) between Boards.

A motion was made, seconded and carried to deem this MOU no longer valid.

#### **Program Director's Report:**

Nothing to report.

#### **Outreach Report:**

Nothing to report.

### **GENERAL BUSINESS**

#### **Services Provided by AMI**

Vincent L. DiCianni, President, Affiliated Monitors, Inc. (AMI), was present and discussed services provided by AMI.

**Requests for Waivers of the Board for the Number of Advance Practice Nurses**

Patricia Hagan, M.D., appeared and presented to the Board.

A motion was made, seconded and carried to approve the waiver requests.

**Rule 400 - Requests for Waivers of the Board Rule Regarding the Regulation of Physician Assistants**

**Floyd Russak, M.D.**

A motion was made, seconded and carried to table this request pending further information.

**PUBLIC RULEMAKING**

At 9:30 a.m. an announcement was made that rulemaking would start after conclusion of the General Business.

**Rule 150 Medical Transparency Act (Skolnik Act)**

A motion was made, seconded and carried to convene the public rulemaking hearing, which was convened at 10:00 a.m. The Hearing was properly noticed under the provisions of the Administrative Procedure Act to consider Rule 150.

Dr. Faricy presented an overview of the proposed changes to Rule 150, the requirement that licensed physicians timely update information required by the Michael Skolnik Medical Transparency Act. A full opportunity was provided for submission of oral and written comments by the public.

After due consideration, a motion was made, seconded and carried to repeal the old Rule 150 and adopt the new Rule 150 as amended, together with statement of basis and purpose, as published with the Notice of Rulemaking Hearing.

**Medical Transparency Act Policies Questions**

The Board reviewed a memorandum from Cheryl Hara, Program Director, dated November 3, 2008, pertaining to NPDB statutory citations regarding reporting in the file.

A motion was made, seconded and carried to revise the policies and review changes at the next meeting in February 2009.

**EMTS-MDC Recommendations for Rule 500 Waivers**

Arthur Kanowitz, M.D., FACEP, Medical Director, Emergency Medical & Trauma Services (EMTS) Section, and Marilyn K. Bourn, R.N., MSN, NREMT-P, EMTS State Training Coordinator, Colorado Department of Public Health and Environment, were present at the meeting to discuss Medical Direction Committee (MDC) Rule 500 Waiver recommendations and requests. The Board reviewed an October 27, 2008 memorandum from Dr. Arthur Kanowitz outlining the waiver requests and the Medical Advisory Group (MAG) recommendations, along with the waiver applications.

After discussion, a motion was made, seconded and carried to adopt the EMTS-MDC recommendations for Rule 500 Waiver Requests with the exception of Dr. Erling's Waiver Request 08-077, which was adopted with conditions.

**Proposed Amendments to Rule 500**

The Board reviewed a memorandum with proposed rule changes from D. Randy Kuykendall, Chief, EMTS Section, dated October 30, 2008, and heard a presentation from Arthur Kanowitz, M.D.

This was for informational purposes and rulemaking for these proposed changes will be posted for the February 2009 meeting.

**Colorado Physician Health Program and 12-Step Requirements**

Constance B. Wood, Esq., and Kari Hershey, Esq., appeared and presented to the Board.

The Board reviewed a letter from Kari Hershey, Esq., dated October 30, 2008 and response and attachment from Constance B. Wood, Legal Counsel to CPHP, dated November 7, 2008.

At 11:39 a.m. a motion was made, seconded and carried unanimously to enter into executive session pursuant to Sections 24-6-402(3)(a)(II) and (III), C.R.S., to discuss pending or imminent court action involving the Board as a party and to discuss withcounsel information that is subject of the attorney-client privilege. After discussion, at 12:14 p.m., the Board voted to leave executive session and return to open session.

A motion was made, seconded and carried to direct CPHP to identify, evaluate and offer programs for licensees requiring inpatient treatment services for substance and alcohol abuse that: 1) include an option of a 12-step program approach that is not faith-based; and 2) include an option of a non-12-step program that does not have any faith-based component. The Board expressly noted that it is their intent to provide treatment options that are not faith-based for licensees needing residential treatment in order to provide and promote informed choice. The Board further directed CPHP to report back regarding treatment options at the February 2009 full Board meeting.

**Augustine Rios, M.D., Initial Decision, ME 2008-0001**

Amy Colony, Assistant Attorney General, Conflicts Counsel, advised the Board.

The Board reviewed the pleadings in this matter, memoranda from staff, and a Proposed Final Board Order. The Board heard oral argument from Dr. Rios and from FAAG Ilene Wolf Moore, Esq.

At 1:30 p.m. a motion was made, seconded and carried unanimously to enter into executive session pursuant to Sections 24-6-402(3)(a)(II) and (III), C.R.S., to discuss pending or imminent court action involving the Board as a party and to discuss withcounsel information that is subject of the attorney-client privilege. After discussion, at 1:44 p.m., the Board voted to leave executive session and return to open session.

A motion was made, seconded and carried to adopt the Proposed Final Board Order drafted by Steven R. Kabler with amendments to clarify the specific Findings of Fact, Discussion and Order that were adopted by the Board in a Final Board Order and to exclude dicta stated by the Administrative Law Judge. Conflicts Counsel was to provide an Amended Final Board Order for review in December 2008.

**CPHP Report, First Quarter, Report ending September 30, 2008**

The Board reviewed the September 30, 2008 First Quarter Report.

A motion was made, seconded and carried to accept the report.

**CPHP Audited Financial Statements for Fiscal Year Ending June 30, 2008**

The Board reviewed the Audited Financial Statements for Fiscal Year Ending June 30, 2008

A motion was made, seconded and carried to accept the report.

**CPHP Compliance Report Regarding Utilization of Funds for Fiscal Year Ending June 30, 2008**

The Board reviewed the CPHP Compliance Report Regarding Utilization of Funds for Fiscal Year Ending June 30, 2008

A motion was made, seconded and carried to accept the report.

**Peer Assistance Program Funding**

The Board reviewed a memorandum from Susan Miller dated October 27, 2008.

A motion was made, seconded and carried to approve increasing the peer assistance fee from \$100 every two years to \$122 every two years effective with the May 2009 physician renewal. This applies to Board of Medical Examiners physicians and physician assistants.

**ATTORNEY GENERAL REPORTS**

**Case Status Reports**

The Board reviewed privileged case status reports dated October 31, 2008.

No action was taken.

**REPORTS OF OFFICE OF INVESTIGATIONS**

**Glenn Philip Wallis, Alleged Unlicensed Practice, Case #2008-002961-F**

The Board reviewed a memorandum from D'Ann Murphy, Investigator, dated August 27, 2008.

A motion was made, seconded and carried to dismiss the case.

**Randal Dick, Alleged Unlicensed Practice, Case #2008-002254-F**

The Board reviewed a memorandum from D'Ann Murphy, Investigator, dated October 31, 2008.

A motion was made, seconded and carried to issue a cease and desist order on Mr. Dick and to refer this matter to the Office of Investigation for possible criminal conduct.

**Proposed Letter to Hep C Connection**

The Board reviewed and a motion was made, seconded and carried to approve, as drafted, the proposed letter to Hep C Connection.

**Proposed Letter to Miles & Peters Regarding Schryver Medical, Inc.**

The Board reviewed and a motion was made, seconded and carried to approve, as amended, the proposed letter regarding Schryver Medical and to close this case.

**The Use of Rapid Sequence Intubation Procedure (RSI) by EMT's**

The Board reviewed a memorandum from staff and letter from Marilyn J. Gifford, M.D., Medical Director, Emergency Services, Memorial Hospital, dated September 14, 2007.

A motion was made, seconded and carried to refer this matter to the EMTS State Medical Director to provide investigation.

**Medical Board Sunset Review Process**

Brian Tobias, Senior Policy Analyst, and Vivienne Belmont, Policy Analyst, DORA Office of Policy and Research, appeared and presented to the Board. Discussion ensued regarding the Sunset review process.

**Office of the Attorney General**

**Hal A. Huggins, Unlicensed Practice, 2007-003360-F**

The Board reviewed a memorandum from Karen M. McGovern, AAG, dated October 31, 2008, and stipulated Injunction.

A motion was made, seconded and carried to approve the stipulated Injunction in Case No. 08 CV 1887, as drafted.

**ALLEGATIONS OF UNLICENSED PRACTICE OF MEDICINE AND/OR RULE 800 VIOLATIONS**

**Oximetry Company, LLC (Unlicensed Practice)**

The Panel reviewed a memorandum from Cindy Klyn, Program Director, Physical Therapy Licensure, dated August 18, 2008.

No action was taken.

**Julia Wilmot (Unlicensed Practice)**

The Panel reviewed a memorandum from Maris Soto dated November 3, 2008, and letter from Shannon Harrison, LCSW, dated July 23, 2008.

A motion was made, seconded and carried to direct staff to send a letter to the Respondent regarding her use of the term "Dr.".

**ITEMS OF INTEREST**

- The Board reviewed information on Caribbean Medical University (CMU), Antilles.
- The Board reviewed an article on Medicare and e-prescribing from *American Geriatrics Society* weekly news review.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 2:58 p.m.

**FOR THE BOARD OF MEDICAL EXAMINERS**

*Approved by: Patrick O. Faricy, M.D.*

*Date: February 19, 2009*